THE AMERICAN SYSTEM

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I. Origins and Development

A. Introduction

Benjamin Franklin, one of the wisest of Americans, wrote to an old friend in France on October 22, 1787, barely a month after the adjournment of the Constitutional Convention, enclosing a copy of the proposed Federal Constitution, and remarked that he had spent four months in the Convention which prepared it. "If it succeeds," he added, "I do not see why you might not in Europe carry the project of good Henry the Fourth into execution, by forming a Federal Union and One Grand Republic of all its different States and Kingdoms, by means of a like Convention; for we had many interests to reconcile." Franklin's comment identifies the essential problem in organizing a rule of law to supersede the appeal to arms in world politics--not the simple vindication of right against wrong, but the reconciliation of conflicting interests. Important interests, he clearly understood, must be respected like veritable rights. A durable international organization, Franklin knew, must of necessity rest upon the consent of the interested peoples and be sustained by a general conviction that their various interests will be duly considered in the management of its affairs.

The framers of the American Constitution, so well described by Gladstone as one of the finest documents ever to emanate from the mind of man, gave the world one of its finest examples of a society of men forming a more perfect union by rational adjustment of conflicts of interest so as to promote the common interests felt by them to be fundamental and durable. Unfortunately, Europe was not able to form a federal union and today we see the NATO Pact on one side and the Warsaw Pact on the other dividing Europe into two armed camps. It is regrettable that the Americans who learned so well the lessons of how to govern divergent interests in their own country seem incapable of recognizing the principle

in world affairs that important interests must be respected as veritable rights. However, in spite of the world's disappointment at the role of the United States in 20th century international affairs, it must be admitted that they have wrought a form of government which effectively governs the domestic political affairs of a nation of 170 million. This remarkable record is not without its failures as well as its successes. There are weaknesses as well as strong points. On balance the American political development is one which we can profitably study and in order to properly understand it we must take a look at its origins in the colonial system, through the days of the Confederation after the winning of independence from Great Britain, to the formulation of the Constitution.

B. Colonial Government

In all phases of colonial government a striking feature was the lack of controlling influence on the part of the English Government. During their formative period, the colonies were, to a large degree, free to develop as their inclinations or force of circumstances dictated. The English Government as such had taken no direct part in founding any of the several colonies except Georgia, and only gradually did it assume any part in their political direction. The fact that the King had transferred his immediate sovereignty over the new world settlements to stock companies and proprietors did not mean that the colonists in America would necessarily be free or partially free of outside control. Under the terms of the Virginia and Massachusetts Bay charters, for example, complete governmental authority was vested in the companies involved, and it was expected that these companies would be resident in England. Inhabitants of America, then, would have no more voice in their government than if the King himself had retained absolute rule.

Exclusive rule from the outside, however, was bound to be subjected sooner or later to certain definite limitations. The first

step in this direction was a decision on the part of the London (Virginia) Company directing its appointed Governor in 1619 that free inhabitants of the plantation should elect representatives to join with the Governor and an appointive "Council" in passing ordinances for the welfare of the colony.

This apparently minor concession proved one of the most far-reaching in its effects of any occurring in the colonial period. From that time on it was generally accepted that the colonists had a right to participate in their own government. Once a group gets a taste for self-government it is extremely difficult to choke it off. In most instances after the Virginia experience, the King in making future grants, provided in the charter that freemen of the colony involved should have a voice in legislation affecting it. Thus the charters of Maryland, Pennsylvania, the Carolinas, and New Jersey specified that legislation should be with "the consent of the freemen." In only two cases was the self-government provision omitted, in New York and Georgia. In the latter two cases this omission was short lived, for the colonists demanded representation so insistently that the authorities soon yielded.

Although at first the right of limited representation was of minor importance, the settlers were not to be satisfied with a few crumbs from the table of the King. The elective assemblies first seized and then utilized to the maximum, control over financial matters. In one colony after another, the principle was established that taxes could not be levied, or collected revenue spent--even to pay the salary of the governor or other appointive officers--without the consent of the elected representatives. This provided a very effective control over any rash act by one of the King's minions. Thus there were instances of independent-minded or imperialistically inclined governors who were voted either no salary at all or a salary of one penny. By and large the governors rapidly tended to become rather pliable to the will of the colonists.

In New England there was even more complete self-government. In the colony of New Plymouth the settlers were beyond the jurisdiction of the London Company. Through the Mayflower Compact they undertook to enact, constitute and frame such "just and equal laws, ordinances, acts, and offices, as shall be thought most meet and convenient for the general good of the colony." The Massachusetts Bay Company, the colonies of New Haven, Rhode Island and Connecticut also succeeded in becoming self-governing.

The Crown did not take kindly to these actions and did not let them go unchallenged. Court action was taken against the Massachusetts charter and in 1684 it was annulled. Then all the New England colonies were brought under royal control with complete authority vested in an appointive governor. This development roused the ire of New England settlers and the arrangement was considerably modified. As was true of the other colonies this share in government soon became extended until it became virtual domination.

The larger measure of independence enjoyed by the colonists in the economic as well as the political field naturally resulted in their growing away from Britain. In a word, the colonial peoples had become Americans rather than British Colonists. The story of the American Revolution is well known to every schoolboy. Suffice it to say that the measure of independence wrought by colonists who were chiefly of English stock, added to the complete lack of any feeling towards the Crown on the part of settlers from other countries such as the Dutch, Swedes, Germans, etc., led inevitably to the day when British efforts to reimpose strict measures of control were bound to meet stiff opposition.

Involved in imperialistic ventures elsewhere, and hampered by the long lines of communication across an ocean, the British were not prepared to face a long and debilitating war to retain their American colonies. The intervention of France helped swing the balance. By one of the great ironies of history, an exploited

colony or group of colonies gained independence from a great imperialistic power, thanks to the intervention of one of Europe's most autocratic of Kings.

C. The Colonies Gain Independence

During the war for independence the 13 colonies had attempted to act in concert through the mechanism of the Continental Congress. In spite of its faults and weaknesses this body was to prove a wonderful training ground for the men who would become the political leaders of a new nation.

The war left the 13 colonies with a debt of about $40,000,000, a fifth of which was owed to foreign powers. The Continental Congress, which could not levy taxes to cover current operating expenses, was forced to appeal for contributions from the states to meet its debt--a slow, ineffective process at best. Moreover, the unity which bound the 13 states together against the King's soldiers, disintegrated as rapidly as the Grand Alliance of World War II was to do two centuries later. Each state acted as a sovereign nation, passing its own tariff laws, and creating hardships for all, especially for the poor.

While high-minded Americans sought a real government of all the people, narrow-minded, provincial vested interests had other ideas. Property qualifications for voters and office holders effectively denied suffrage to the common man. The workers carried a burden of back-breaking taxes, which finally drove Daniel Shays of Massachusetts to lead an open rebellion against the moneyed interests which controlled the government of Massachusetts in the autumn of 1786. This rebellion of the proletariat has been given scant attention by apologists for American democracy, but its importance cannot be over-emphasized. Although it was quickly crushed, its implications had shaken the wealthy classes who feared more and perhaps greater uprisings from the oppressed poor.

To the credit of the Founding Fathers it must be said that they learned their lessons well. The Continental Congress, a wartime creation, continued to govern in the immediate post-war period, under the Articles of Confederation, the first written Constitution of the new nation.

D. Government Under the Articles of Confederation

Inflation had run wild during the war and finally, late in 1779, the Continental Congress called on the states to pay for the war. This last ditch effort failed to settle the financial problem, but it finished the Congress as a powerful governing body. Before the money presses were shut down, Congress had the whole wealth and resources of the Continent at its command. Once this power was given up, it became as dependent on the states as the King of England was on Parliament.

Meanwhile, the Articles of Confederation were before the state legislatures for ratification. Although these articles were written in 1781 before the fighting ended, they did not reflect a spirit of national strength and unity. Written for peacetime use, they were weakened by sectional jealousies, errors due to inexperience, and by the all-pervading dislike of taxation.

In foreign affairs, war and peace, treaty making, etc., federal authority was of a sweeping nature. There were, however, three major defects which utterly ruined the new form of government.

1. The most serious was the absence of any authority to tax, leaving Congress completely at the mercy of the states. Coupled with this weakness was the inability of Congress to regulate commerce between the states.
2. The second major weakness was procedural. With each state delegation having one vote, the Articles of Confederation required nine state votes for certain categories of decisions, and seven for all the rest. As a result, to be absent was the same as a negative vote, a system which paralyzed Congress.

3. The third handicap was a declaration that each state retained every power not expressly delegated to the Confederation.

With the coming of peace, desperate trade rivalry took the place of wartime unity. States set up trade barriers against each other. When Congress demanded money, each state complained that others were paying too little, so each retaliated by paying less.

With the fears aroused by Shay's defiance of the courts, inability to collect taxes and a general financial depression, alarm spread everywhere among men of property and other sober citizens. All this brought a rush of support for a proposed Constitutional Convention.

In May 1787, a gathering of America's most heroic figures in statecraft assembled in Philadelphia. Among the notables facing George Washington, the presiding officer, were the venerable 81-year old Benjamin Franklin, James Madison, Gouverneur Morris, James Wilson, George Mason, Roger Sherman, ex-shoemaker turned Judge, the Pinckneys of South Carolina, and the youthful Rufus King and Elbridge Gerry of Massachusetts. Though age and wisdom were present among the 55 delegates, youth predominated, for the average age was 42.

The convention had been authorized merely to draft amendments to the Articles of Confederation. But, even though the thought of a government higher than that of the individual states was repugnant to many, all were agreed that the six years under the Confederation made up one long chronology of failure and ineptitude.

E. <u>The Constitution</u>

1. <u>Reconciliation of Conflicting Interests</u>

Since the delegates were unanimous on that point, with a manly confidence in their country, they threw aside the articles and went ahead with the consideration of a wholly new form of government. Perhaps it is being a little less than honest to state

that the delegates were unanimous on only one point. Although much bickering arose as each state fought for its own vested interests and delegates kept foremost in mind the group which each represented--plantation owners, small farmers, manufacturers, small tradesmen and workers, peoples of varying customs and religious beliefs--gradually a pattern emerged showing needs which all shared in common.

The following points were clear as the endless debates progressed:

1. All states had suffered needlessly from the weakness of government under the Articles of Confederation.
2. All states had much the same needs and basically similar ideas about laws, freedom and self-government.
3. No state was safe from invasion by a foreign power.
4. No state was strong enough to protect its foreign trade.
5. No state, acting alone, could successfully handle the American Indian problem.
6. No state could feel safe from the incursions of British perfidy since the former Mother country was calculatedly lax in living up to its treaty obligations.
7. No state, by itself, could improve the system of inland waterways.
8. All states needed a good interstate network of roads for trade, travel and the postal service.
9. All delegates were agreed that they would prevent the rise of tyranny in any form.

The basic and seemingly paradoxical problem faced by these able delegates was the reconciliation of conflicting interests. There was, on the one hand, the power of local control already being exercised by the 13 semi-independent states and, on the other, the necessity for a strong central government.

The delegates argued controversial points, pleaded their special interests and discussed possible solutions for four long and tiring months. There were times when many feared that the convention would bog down in a mire of words before reaching any objectives. A few delegates from the smaller states actually walked

out because they feared that they would be under the thumbs of the larger states. It was several years before the State of Rhode Island, smallest of the 13 colonies and still today smallest of the 48 states, finally accepted the new Constitution in May 1790.

The compromise which finally broke the log jam of the convention was a fairly simple one to understand today. The delegates adopted the principle that the functions and powers of the national government, being new, general and inclusive, had to be carefully defined and stated while all other functions and powers were to be understood as belonging to the states. These men were wise enough to recognize that if the national government were to have real power, it had to be given the authority, among other things, to coin money, regulate commerce, declare war and make treaties.

2. Checks and Balances

Most of the delegates were men of competence who were familiar with the writings of Locke and were adherents of Montesquieu's concept of the balance of power. These influences led them to the decision to establish three distinct branches of government, each equal and coordinate. The legislative, executive and judicial powers were to be so adjusted and interlocked as to permit harmonious operation. This has not always worked out as well in practice as American apologists and theoreticians would have us believe. All too often we have been confronted by statesmanlike pronouncements in favor of peace by the President, while utterances full of fire and brimstone, generally directed at the Soviet Union and the democracies of Eastern Europe, have been made by irresponsible members of the Congress whose sole preoccupation seems to be re-election. However, the delegates assembled in Philadelphia through the summer of 1787 were men of vision who undoubtedly felt confident that the government they had created would be so well-balanced that no one interest could ever gain control. It was

natural for the delegates to assume that the legislative branch, like the colonial legislatures and the British Parliament, should consist of two houses.

The petty bickering, the struggle for vested interests, the alignment of large against small states, reminding us so much of today's difficulties in the United Nations, need not be described in detail here. Countless volumes have been written about the Constitution, its adoption by the states--a process known in America as ratification--and the Bill of Rights.

The new Constitution, which was based on a system of checks and balances, looks to the observer two centuries removed as a very reasonable document which should have been readily accepted. In brief, the Constitution consisted of a preamble and seven articles. As a masterful summary of just what the Constitution was expected to do the preamble is worth quoting in its entirety.

> We the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of Liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Article I deals with the Legislative Branch and we shall deal with it as well as the other articles in more detail later on. Article II is concerned with the Executive and Article III with the Judiciary. Article IV discusses the rights of citizens, their privileges and immunities, extradition of criminals from one state to another, disposition and control of territorial lands, admission of new states, and guarantees to each state a Republican form of government and protection against invasion. Article V takes up the process by which the Constitution may be amended. Article VI states the rule that the Constitution and the laws made in pursuance thereof, as well as all treaties, shall be the supreme law of the land and that no religious test shall ever be required as a qualification to any office or public trust under the United States. Finally, Article VII declared that the approval of nine

states would be sufficient for the establishment of the Constitution.

The new Constitution was subjected to bitter criticism in many quarters and on many grounds before it was approved. There were men of wealth and position who thought it went too far in the direction of democracy. Others insisted it did not go far enough. Some of the states were extremely reluctant to surrender substantial sovereignty to any national government, and wanted more definite limitations on the national power.

The struggle for ratification by nine states caused a storm of controversy in the press, the legislatures and the state conventions. Thanks to the able presentation, through The Federalist essays, of powerful arguments in favor of the new constitution by Alexander Hamilton, James Madison and John Jay, approval of the necessary nine states was obtained in 1789.

3. Bill of Rights

As a result of agrarian discontent in Massachusetts, where Shay's rebellion against the tyranny of wealth had not been forgotten, a Bill of Rights was appended to the Constitution in the form of amendments.

In direct response to popular demand, the First Congress submitted to the states for ratification the first ten amendments, known as the Bill of Rights. These were speedily adopted, guaranteeing freedom of speech, press, assembly, and the right to petition for redress of grievances. The second amendment guarantees the people the right to have weapons. The third amendment guarantees that troops shall not be quartered in private houses without the owner's consent. The fourth amendment protects the people from search or seizure of persons, houses, goods, or papers without a search warrant. The fifth amendment forbids the trial of any persons for a major crime, except after indictment by a grand jury; prohibits punishment without due process of law; and provides that an accused person may be compelled to testify against

himself. This amendment is one for which all Socialists are very grateful. It has been the bulwark in the defense of our comrades in the United States against the witch hunters like the late Senator Joseph McCarthy and Vice President Nixon.

The sixth amendment orders speedy and public trial of persons charged with criminal offenses in the district where the crime was committed; requires trial by an unbiased jury after a plain statement of the accusation; guarantees counsel for the accused and provides that witnesses for the accused shall be compelled to attend the trial, and that all witnesses shall testify in the presence of the accused.

In their legalistic approach to this amendment, the present Supreme Court in a recent decision in the now famous Mallory Case, has unleashed a reign of terror in the United States, especially in its capital city, Washington, D.C. In a narrow interpretation of "speedy trial," the Supreme Court has ruled that a murder suspect who had confessed his guilt after seven and one-half hours of police interrogation, was denied his constitutional rights to a speedy trial. This decision has been invoked countless times since by lower courts, and victims of robbery, assault and rape have helplessly watched their attackers go scot free. If ever there was evidence of decadence in a so-called democracy, here is the legal decision to prove it. No wonder hooliganism is rampant and the streets of Washington are not safe for citizens even in broad daylight. More than 90 per cent of the criminal element in the nation's capital are of the Negro race.

The seventh amendment provides for trial by jury for lawsuits involving anything valued at more than $20.00. The eighth amendment forbids setting excessive bail for persons involved in criminal proceedings, the levying of excessive fines, and cruel or unusual punishments. Here again we see the contradiction in American practice. All sorts of protections are guaranteed criminals while honest citizens have little protection.

The ninth amendment states that rights not specified in the constitution are not therefore taken away from the people, while the tenth amendment declares that powers not delegated to the United States, nor prohibited by the Constitution to the states, are reserved to the states, or to the people.

4. Amendments

Since the adoption of the Bill of Rights, over 3,000 amendments to the Constitution have been proposed. Only 12 of these have been adopted.

By the terms of Article V of the Constitution, there are two methods by which it may be amended:

1. If both Houses of Congress agree by a two-thirds vote that a proposed amendment is necessary, it is submitted to the states for their approval.
2. The legislatures of two-thirds of the states, acting on their own initiative, may ask Congress to call a convention for proposing amendments, and Congress would be compelled to comply.

Regardless of which methods were used, ratification by three-fourths of all the states is necessary before the amendment is adopted. The second method has never been used. Of the 3,000 or more amendments proposed, Congress has submitted only 27 to the states. Of these, only 22 (including the Bill of Rights) have been ratified.

II. The Executive

A. Powers and Limitations

The executive power in the US Government is vested in the President, who is elected for a four-year term. Since the adoption of the 22nd amendment, he is limited to two terms in office. Only one president has been elected to more than two terms. Franklin D. Roosevelt, first elected in 1932 died shortly after his fourth inauguration in 1945.

Presidents are not elected directly by popular vote, but rather by vote of the Presidential Electors from each state who are, however, chosen by popular vote. To be eligible for the highest office in the land, the candidate must be a citizen of the United States by birth and at least 35 years of age. There are no other qualifications beyond the ability to win the party nomination and a majority of the votes of the electors.

The President is Commander-in-Chief of the Army, Navy and, since 1948, of the separate Air Force as well. Although he does not have the right to declare war, he can move his troops and order his naval units to such areas and to such activities as to provoke war or stir up international tension. Eisenhower's action in ordering the Sixth Fleet to the Eastern Mediterranean during the turbulence over Syria is a typical example of the President, acting as Commander-in-Chief, taking unilateral action which could have led to war. Should there have been an incident, it is conceivable that Congress could have been convinced that a declaration of war was essential. As a practical matter, however, such an eventuality was most unlikely because the American people do not want war and few Congressmen could have survived an election in the face of such an unpopular action.

A far better example can be found in the 1941 antics of Franklin D. Roosevelt and his Secretaries of State and War, Cordell Hull and Henry L. Stimson. This trio goaded the Japanese and in effect

led them to make the first blow in the sneak attack on Pearl Harbor. No authority from Congress is needed for immediate retaliation. When Congress convened the following day, their declaration of war was the mere recognition of a fait accompli.

It is hard to conceive of a king or potentate with such real powers at his disposal as those incumbent on the President of the United States. True, indeed, the system of checks and balances is an effective brake on any precipitate action in the normal course of domestic or foreign relations.

By and with the advice and consent of the Senate, the President has the power to make treaties, nominate ambassadors, other public ministers and consuls, judges of the Supreme Court and other officers of the United States. In all of these appointments, however, Senate confirmation is essential.

The President can veto any bill passed by Congress, and it requires a two-thirds majority of both houses to override his action. He is required to submit a periodic report on the State of the Union, which traditionally he does annually in his message at the beginning of Congress. In his annual and special messages to Congress, he frequently recommends the passage of legislation which he believes warranted by current conditions.

For 113 years--from 1800-1913--no President of the United States appeared in person before Congress to deliver a Presidential message on the State of the Union. Washington and Adams had done so, but from Jefferson to Taft the message was read by a clerk. Wilson, feeling that the President is a person and not just a branch of the government, reinstated the practice of appearing before a joint session of both houses of Congress.

This custom, which has been continued by his successors, gives the President an excellent opportunity of presenting a program for action in the hope that Congress will devote its deliberations to constructive efforts. In presenting his budget appeal, the President may ask for extraordinary funds for foreign aid, a pay

raise for federal workers, extra funds for construction of new post offices to bolster the sagging economy, and billions to assist his ex-Nazi hirelings in their vain efforts to catch up with the missile developments of the USSR. Congress may adopt all or some of this program. There is the clear advantage to America that the President sets out guide lines which at least get Congressional consideration even though not necessarily full approval. The Congress may vote considerably less money than the President requests for individual projects and it may reject some in their entirety.

In the making of treaties, recent presidents have profited greatly from the errors of Woodrow Wilson. The World War I President was an idealist who dreamed up his own rules and closed his eyes to secret agreements made by Britain and France. Because he failed to consult with the Senate, that august body led by Henry Cabot Lodge, the grandfather of America's UN delegate, rejected the Treaty of Versailles, repudiated Wilson's 14 Points and kept America out of the League of Nations. Today, American presidents are wiser. Frequent consultations are held with leading members of both Houses of Congress before embarking on any program which might result in a treaty with a foreign power.

Franklin D. Roosevelt developed the technique of appealing directly to the voters by means of radio addresses. In that way he gathered popular support and effectively put a squeeze on the members of Congress facing re-election by their constituents. In spite of all the pious platitudes to which all Americans pay lip service, the members of the Congress, especially those in the House, are well aware that their main concern is to be re-elected.

The President enjoys enormous personal powers in addition to his roles as treaty maker and Commander-in-Chief of the Armed Forces. He appoints the principal officers of the foreign service and it must be recognized that Ambassadors are the personal

representatives of the President. He chooses his own cabinet and executive assistants in government departments. He appoints thousands of officials in both the executive and judicial branches of the government.

Countless volumes could be written to describe the all-inclusive powers of the President, the limitations on his power, the personal influence of his office and the respect he commands. Suffice it to say that he holds one of the most important offices in the world today.

To sum up, this man whose salary is $100,000 a year plus $90,000 in allowances, mostly taxable at a high rate, is elected by the so-called Electoral College for four years. He has the power to recommend measures to Congress, to call special sessions of the Congress and to deliver messages to that body. He appoints Federal judges, representatives to foreign countries, heads of departments and other important officials. He can pardon criminals, carry on business with foreign nations and command all military forces.

B. The Two-Party System and Bi-Partisanship

Although it has not always been true that politics stops at the three-mile limit, the tradition of bi-partisanship in the conduct of war and in the field of foreign relations has been strongly emphasized in recent years. Any nation which entertains the hope of dividing Americans from their President in wartime is playing a fool's game as Germany and Japan learned to their sorrow in World War II. America is a melting pot of many cultures and traditions. Americans feel strong enough to indulge in the luxury of criticizing their government and their leaders. Since 1954 President Eisenhower has had to work with a Congress controlled by the opposition. Yet, he has had no serious problem in getting the funds requested for foreign aid and military preparedness.

The mention of the opposition calls to mind the fact that the Constitution made no provision for political parties and that no

evidence of opposing political philosophies was apparent to any extent during the eight years of Washington's Presidency. Over the years the Federalists, the party of Washington--if he could rightly be called a party man--and John Adams, and the Democratic-Republicans of Jefferson, Madison and Monroe evolved into other parties. There was a world of difference between Jeffersonian democracy and the democracy of Andrew Jackson. The Whigs, the Know Nothings, the Prohibitionists, Socialists, and Communists have appeared on the stage. But from the time of Abraham Lincoln, the political scene has been dominated by two political parties, the Republicans, tracing their ancestry to the Civil War President, and the Democrats who trace their lineage back through Jackson to Jefferson. Modern day Republicans celebrate Lincoln's birthday much as Christians honor their patron saint. Meanwhile, the Democrats honor both Jefferson and Jackson and utilize both anniversaries as occasions for fund raising to help the party treasury.

C. Federal Departments and Agencies

The Executive Department of the US Government is really a big business. Today, this business is carried out by ten departments and 41 independent agencies, employing tens of thousands of civil servants, the largest single unit being the postal service. The departments are headed by cabinet officers, chosen by the President and approved by the Senate.

Article II, Section 2 of the Constitution contains the implied but not specific authorization for the creation of cabinet officers. This section provides for the appointment by the President of "all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law." The same section provides that the President "may require the opinion, in writing, of the principal officer in each of the Executive departments, upon any subject relating to the duties of their respective offices." The departments are not named, nor their duties described. The cabinet, however, is now accepted as

part of the Government organization. Each cabinet member holds the authority delegated to him by the President to manage his own department. The duties of these departments are many and varied and can be found discussed in detail in any standard textbook on American Government.

George Washington, the first President, got by with only four cabinet officers at the outset of his presidency. He chose a Secretary of State, Secretary of the Treasury, Secretary of War, and an Attorney General. In 1794 he added the Postmaster General.

John Adams added the post of Secretary of the Navy to his cabinet in 1798. Other cabinet officers were added over the years; the Secretary of the Interior in 1847 under President Taylor. It should be strongly emphasized that unlike the governments of most of the world, the Secretary of the Interior has absolutely no police power. He was chosen to oversee a multitude of problems of national concern which fitted into no department then existing. He is largely responsible for Indian affairs, the conservation of natural resources, and the maintenance of national parks, monuments and reservations. In 1889 the Commissioner of Agriculture, a department created by act of Congress in 1862 was elevated to cabinet status by President Grover Cleveland. The Department of Commerce and Labor was created in 1903 and separated into two departments of cabinet rank 10 years later. In 1947 the three military services were combined into the Department of Defense. The War Department was abolished and the Secretaries of the three military services no longer retained cabinet rank. Finally, in 1953, an act of Congress created the Department of Health, Education and Welfare, and the secretary was made a member of the cabinet.

Almost invariably the members of the cabinet are outstanding personages from the same political party as the President, and as such wield considerable influence. Through them the President exercises his authority downward through the executive organization.

Occasionally, as a gesture of national unity, leading men from the opposite political party are chosen for one or more cabinet posts. During World War II Roosevelt chose Henry L. Stimson, former Republican Secretary of State to be Secretary of War, and the Republican Frank Knox to be Secretary of the Navy. President Eisenhower has had two Secretaries of Labor in the past five years, both of them Democrats, the late Martin Durkin, and the present incumbent James Mitchell.

The growth of America's role in international affairs has spawned a whole host of federal agencies such as the United States Information Agency, the International Cooperation Administration, the Atomic Energy Commission, etc. The 41 independent agencies vary considerably in their functions, staffing and influence. Some of these are rather innocuous organizations such as the American Battle Monuments Commission, while others are important and direct emissaries of the President such as the General Services Administration and the Federal Power Commission.

III. The Legislative Power

A. Organization of Congress

While the powers granted to the Executive Branch of the US Government seem particularly awesome because they are vested principally in one man, the responsibilities of the Legislative Branch are none the less impressive if not so personal. The first sentence of the First Article of the Federal Constitution reads: "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives."

The framers of the Constitution were greatly afraid of a strong executive and desired to reserve the final and decisive vote to the legislature, as representing the people. Although the Constitution was the result of a series of compromises and established the system of checks and balances, with substantial powers granted to the President, there is scarcely a single Presidential power which cannot be reached by the long arm of legislation.

The Congress of the United States is composed of the House of Representatives and the Senate. Membership in the House is based on a proportion of approximately one seat for every 350,000 people in a given state. Thus New York has 45 seats in the House, while Nevada has one. The total membership of the House of Representatives is 435.

In the Senate each state holds two seats regardless of its size or importance. The total membership is 96. Senators serve for a term of six years with one-third of the membership elected every two years. The term of office of a member of the House, usually referred to as a Congressman is two years. The system of biennial elections to the House provokes a condition where every member must devote a considerable amount of time every second year to mending his fences back home in order to insure his continuance in office. In theory, at least, a Senator is generally

a more mature individual. The minimum age requirement for election to the House is 25; for the Senate 30. Further, a Representative or Congressman is elected to represent his district and is expected to protect the interests of a relatively small group of people, whereas a Senator is legally a United States Senator from a particular state. By definition he should have a broader perspective than his colleague from the lower chamber. Since he serves for six years he has the opportunity if he chooses to act like a statesman for five years and a politician for only one. In practice this is a great variable. Many Senators who have tried to act from a completely national viewpoint have found to their dismay that they have lost contact with, and the voting support of, the people who had sent them to the Senate.

The Vice President presides over the Senate but holds little actual power. The Speaker of the House presides over its sessions and wields a great deal of power and influence. The Constitution provided that the members of the Senate would be chosen by the state legislatures. The 17th amendment, however, changed this method so that Senators are also elected directly by the people.

B. Powers of Congress

The broad powers of Congress include the following: To levy and collect taxes; to borrow money; to make rules and regulations for commerce among the states and with foreign countries; to coin money, state its value, fix the standard of weights and measures, and provide for the punishment of counterfeiting; to make uniform rules about naturalization; to establish uniform bankruptcy laws for the whole country; to establish post offices and post roads; to issue patents and copyrights; to set up a system of federal courts; to punish piracy; to declare war; to raise and support armies; to make rules for the Army, Navy and Air Force; to provide for calling out the militia to enforce the federal laws, to suppress lawlessness, or to repel invasion; to cooperate with

the states in organizing and arming the militia; to make all laws for the District of Columbia; to make all laws needed to put into effect all the powers given by the Constitution to the US Government or to any agency or officer of the United States.

C. Limitations

The 10th amendment to the Constitution provides that powers not delegated to the National Government may be exercised by the states or by the people. Specifically, the Constitution forbids the Congress:

1. To suspend the writ of habeas corpus, except in time of rebellion or invasion.
2. To pass laws which condemn persons of crimes or unlawful acts without a trial.
3. To pass any law which will declare to be criminal any act already done which was not criminal when committed.
4. To levy direct taxes on citizens of states, except on the basis of a census already taken.
5. To tax exports from any state.
6. To give especially favorable treatment in commerce or taxation to the seaports of any state or to the vessels using them.
7. To authorize any titles of nobility.

D. Legislative Procedure

Most legislation may originate in either house and when concurred in by the other will go to the President for signature and will then become law. There are, however, certain categories of legislation which are the exclusive prerogative of each. Only the House of Representatives may originate revenue bills. It alone can impeach civil officers and elect a President if no candidate wins a majority of the electoral votes. The Senate alone consents or refuses to consent to treaties. It has the sole right to try persons impeached by the House. It confirms or refuses to

confirm presidential appointees. It elects a Vice President if no candidate has a majority of the electoral votes.

As in every legislative body, there is more to the work of Congress than appears on the surface. Behind the laws which flow from its deliberations there may have been weeks or months of study by specialists in many fields.

Extended hearings or intensive investigations by legislative committees may have pointed the path to be followed. Sometimes investigative committees become more interested in sensational headlines in the press than in improving legislation. When foreign affairs are involved, individual legislators often visit foreign countries between sessions of Congress to make their own studies and confer with officials overseas. Most members of Congress give the impression of being conscientious, hard-working, and well-informed. A minority abuse their privileges, use the time between sessions for junkets and close their minds to any new knowledge. Frequently, they demand all sorts of services from an overworked diplomatic corps whom they loudly condemn on their return to the halls of Congress where, protected by their immunity, they can forget about all the laws of libel.

In taking up legislation there are always two shadows over the halls of Congress. One is the possibility of a Presidential veto and the other is the possibility that a law passed may be declared unconstitutional by the Supreme Court.

The process of getting a bill through the mill to the stage of its becoming law is usually a slow and tortuous one. The usual steps follow a pattern. Any member of either House may introduce a bill, taking into consideration the specific prerogatives of the particular House of Congress. The presiding officer refers the bill to an appropriate committee which either lets it die a natural death or reports it back to the full chamber either favorably or unfavorably. If reported favorably the bill is considered by the full legislative body and if it passes it

is sent to the other chamber where it follows a parallel route. If there should be differences, these are ironed out in joint committee and the bill goes to the President. If he approves and signs it the bill becomes law. If Congress is in session while the President takes no action, the bill becomes law after 10 days. Should the President veto the bill, both Houses may vote again and if a two-third majority of each House is obtained, the bill becomes law.

In drafting legislation, the Congress seldom considers the constitutionality of its acts since it would be rare indeed that its laws violate the Constitution. It has happened, however, and one particular case which attracted wide publicity was the National Recovery Act of 1933, passed by Congress at the instigation of the President. When challenged in court the Supreme Court decreed that the act was unconstitutional. The Supreme Court does not act in an advisory capacity so it is not possible for members of the Congress to confer with members of the Supreme Court for an opinion on proposed legislation.

Although Congress did not create the Supreme Court, it does have the power to pass various laws regarding its organization and work. Congress decides from time to time how many justices the court shall have and what their salaries shall be. When President Roosevelt became annoyed at a series of Supreme Court decisions, he attempted to influence it by enlarging it and packing the court with several new appointees of his choice. He suffered a resounding defeat on this proposal when Congress turned him down. The Senate, of course, acts as a powerful brake on the choice of the President when vacancies occur in the court. It can confirm or reject any name submitted.

IV. The Judiciary

A. The Supreme Court

The Supreme Court of the United States is the only federal court established by the Constitution itself. It could not be abolished without amending the Constitution. Its decisions are final and there is no other court to which appeal can be made.

The judicial power, according to Article III of the Constitution, extends to all cases in law and equity, arising under the Constitution, the laws of the United States, and treaties made under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of different states; between citizens of the same state claiming lands under grants of different states; and between a state, or the citizen thereof, and foreign states, citizens or subjects.

Although the Constitution specifies only the Supreme Court by name, it authorizes "such inferior courts as the Congress may from time to time ordain and establish." Anticipating the creation of such courts by the Congress, the Constitution states that "In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and to fact, with such exceptions, and under such regulations as the Congress shall make."

In practice the Supreme Court of the United States construes the language and purposes of the Constitution when its meaning and application are in question. It is alert to prohibit, through judicial rulings on issues coming before it, any violation of that written document, or any act of the government or private

interests which in the court's opinion might tend to circumvent or weaken the governmental system which brought it into being.

The nine members of the Supreme Court, consisting of a Chief Justice and eight associate justices, together constitute the nation's highest judicial tribunal and therefore the court of last resort on all issues coming before it. Since they are appointed for life, subject only to good behavior, they are in a position to reach independent and impartial judgments, and the country expects them to do so. Since the court's opinions are determined by majority vote, however, it may at times reverse itself or modify an earlier opinion as the result of changes in personnel or on the basis of new reasoning with respect to similar issues.

One interesting sidelight on the Supreme Court's reputation for fairness and impartiality, is that Americans not only expect the Supreme Court to be fair and impartial but they expect it also to seem to be fair. In the twentieth century at least it has been the usual practice to always have on Catholic and one Jew among the nine justices.

In its opinions, the Supreme Court has emphasized repeatedly that it is not concerned with the policy, wisdom or expediency of legislation, but only with its constitutionality. Alone among public officials at the national level the members of the Supreme Court have generally been completely free from the scurrilous attacks in the press frequently visited on the heads of Presidents, Vice Presidents and members of Congress. At the moment, the Supreme Court's decision in the Mallory Case mentioned earlier is extremely unpopular yet no attacks on the justices have been noticeable in the press.

On June 2, 1952 the Supreme Court for the first time in its history held that a President of the United States had exceeded his constitutional powers. It did this in setting aside an order issued by President Truman directing the Secretary of Commerce,

a member of his cabinet, to take possession of and operate most of the country's steel mills. The purpose of the order was to prevent an interruption of steel production during a labor dispute occurring while the Korean conflict was in progress.

The President's case was based on the premise that he had acted correctly under "the aggregate of his powers" as conferred by the Constitution and with the authority implied by these powers. The court decided against the President, holding that the Chief Executive should have looked to Congress for the authority he sought.

There have been isolated instances in which state or municipal governments have refused to comply or resisted compliance with a Supreme Court ruling, or attempted otherwise to circumvent the applicability of a constitutional provision to its internal affairs. The state of Virginia is currently employing every legal delaying action technique at its disposal to defeat or to postpone racial integration in its public schools. The state of Arkansas followed a more violent course in defiance of the Supreme Court ruling of May 31, 1955 ordering racial desegration in public schools terminated with "all deliberate speed." After several legal tests in lower Federal Courts to determine the state's compliance with the "all deliberate speed" enjoinder, the Governor of Arkansas called out the National Guard to prevent violence at Central High School in Little Rock. His action was interpreted as an effort to block implementation of the Supreme Court's decision. After a series of consultations and demonstrations showed little intention on the part of local authorities to obey the court order, President Eisenhower on September 24, 1957 ordered federal troops into Little Rock and federalized the Arkansas National Guard, thereby removing it from the Governor's command. One thousand members of the crack 101st Airborne division were flown into Little Rock to enforce the Supreme Court's decision.

B. Lower Federal Courts

The Constitution leaves to the Congress much authority over the other federal courts. It can decide when to establish more federal courts and judgeships and what cases each kind of federal court shall hear. It can even change or abolish any federal court except the Supreme Court.

Congress has established two types of federal courts whose function is to settle the maximum number of suits and thus lighten the work load of the Supreme Court. The nation is divided into 10 judicial circuits. In each circuit there is one Court of Appeals--the higher of the two types of courts--and a number of District Courts, about 85 in number. There is also a United States Court of Appeals in the District of Columbia which is regarded as a judicial district.

By statute, most federal suits or prosecutions must be tried first in the District Courts. Under certain conditions, if parties to a trial are dissatisfied with the lower court's decision, they may appeal to a higher federal court. In some instances, the appeal may be carried directly to the Supreme Court and in others the case must first be appealed in the Court of Appeals. There are also cases in which the Court of Appeals ruling is final unless the United States Supreme Court chooses to review the ruling. The Courts of Appeals are empowered to review and enforce orders of many federal administrative bodies, such as the National Labor Relations Board and the Securities and Exchange Commission.

The US District Courts are the trial courts with general federal jurisdiction. Each district court has from one to 18 federal district judges depending on the amount of judicial work within its territory.

District Courts have original jurisdiction, that is they gather facts and pronounce judgment, usually with a jury. The Constitution guarantees the right of trial by jury in all cases except civil matters involving less than $20.00.

District Courts handle both civil and criminal cases which fall within the jurisdiction of federal laws. Civil cases tried by district courts include:

1. Cases where a person sues for rights under a federal law.
2. Cases arising on the high seas involving admiralty law.
3. Disputes between citizens of different states. A corporation is considered a person or citizen of a state.

Criminal cases include counterfeiting, postal violations, customs violations and internal revenue matters, espionage, sabotage, treason, kidnapping, white slave traffice, etc.

The Congress, at various times, has established a number of special courts. In 1855, the Court of Claims was set up to allow persons to present money claims against the government. Another special court is the US Customs Court, established in 1926, which arbitrates disputes over the amount of any customs tax on goods being brought into the country. There is also a US Court of Customs and Patent Appeals, which is a court of appeals for customs cases and for patent cases where an inventor feels he has been unjustly refused a patent on his invention by the Department of Commerce. Finally, of fairly recent origin, there is the US Court of Military Appeals to which military personnel may appeal from the sentence of a military tribunal.

C. <u>The Department of Justice</u>

Although it is not completely true to consider the Department of Justice as a bridge between the federal and state legal systems, it does seem proper to consider that agency here before getting into the structure of the state governments in the United States.

Precisely because certain acts both of a civil and criminal nature fall within the province of federal rather than state courts, it seems fitting to examine the great variety of responsibilities which rest on the shoulders of the Attorney General and the Department of Justice.

The position of Attorney General dates back to 1789 when President Washington chose Edmund Randolph of Virginia as a member of his original cabinet. The Attorney General is head of the Department of Justice and chief law officer of the federal government. He represents the United States in legal matters generally and gives advice and opinions to the President and to the heads of the executive departments of the government on request. The Attorney General appears in person to represent the government in the US Supreme Court in cases of exceptional gravity or importance.

Time and space do not permit detailed discussion of all of the activities carried on by the Department of Justice. At least we can list all of them and discuss some of them. At the highest level in the Department of Justice, there is the Attorney General with over-all responsibility, and the Deputy Attorney General who has supervision over all major units of the Department, and acts as chief liaison officer with Congress and other government agencies. Part of the deputy's office--the executive offices--supervise the activities of US Attorneys and Marshals.

In general the Department is broken down into offices, divisions, bureaus and boards. In addition to the two principal offices, there are the offices of the Solicitor General, Legal Counsel, Pardon Attorney, and Alien Property. The divisions include: Anti-Trust, Civil, Criminal, Internal Security, Lands, Tax, and Administrative. The bureaus include the widely known Federal Bureau of Investigation (FBI), Bureau of Prisons, and the Immigration and Naturalization Service. The boards include the Board of Immigration Appeals, and the Board of Parole.

The Solicitor General appears for and represents the government in cases before the Supreme Court. When instructed by the Attorney General, the Solicitor General may conduct and argue any case in which the federal government is interested, in any court of the United States or in any state or municipal court, conferring

with and directing the activities of federal law officers throughout the country whenever the occasion so requires. No appeal is taken by the United States to any appellate court without the authorization of the Solicitor General.

The Assistant Attorney General in charge of the Civil Division has supervision over all matters relating to civil suits and claims not otherwise assigned involving the United States and its officers, agents and employees. Typical of the activities of the division are cases involving admiralty and shipping claims, war damages, general salvage, marine and war risk insurance, fraud cases, patent, veterans, customs cases and general civil matters.

The Assistant Attorney General in charge of the Criminal Division has responsibility for and supervision over the enforcement of federal criminal laws generally, including laws relating to criminal practice and procedure. He has general direction and supervision over United States District Attorneys with respect to the conduct of criminal prosecutions involving violations of federal criminal statutes such as those relating to counterfeiting and forgery, bribery, customs, firearms, extortion, kidnapping, postal matters, narcotics, passports, white slavery traffic, fair labor standards, etc.

Of all the units under the Attorney General the most widely known is the famed FBI, headed since 1929 by J. Edgar Hoover. It is his responsibility to investigate all violations of federal laws with the exception of those which have been assigned by legislative enactment or otherwise to some other federal agency, such as the statutes pertaining to counterfeiting, postal violations, customs violations, and internal revenue matters. The FBI has jurisdiction over investigations involving violations of espionage, sabotage, treason, and other matters pertaining to the internal security of the United States. In all there are about 140 categories of investigative matters within the jurisdiction of the FBI.

The FBI should not be confused with the Secret Service. The latter is a bureau of the Treasury Department created under an 1860 act of Congress. The Secret Service is responsible for the protection of the person of the President and members of his family, the President-elect, and the Vice President at his request. The Secret Service is also responsible for the detection and arrest of any person committing any offense against the laws of the United States relating to coins, obligations and securities of the government. Since 1930 the White House police force has also been under the jurisdiction of the chief of the Secret Service.

Another point to be noted is that although the Department of Justice must carry the burden of prosecuting cases in the federal courts, the role of the FBI is purely investigative in nature. It has no responsibility whatsoever for prosecuting cases in court.

Outside of Washington, the Department of Justice has a District Attorney and a US Marshal in each of 85 judicial districts into which the states are divided, and others in Alaska, Hawaii, Puerto Rico, the Virgin Islands and the Panama Canal Zone. The incumbents are appointed by the President and confirmed by the Senate for four-year terms, on recommendation of the Attorney General. A District Attorney presents to a grand jury all violations of federal laws coming to his attention within his jurisdiction. Should the grand jury bring in an indictment, the District Attorney must conduct the case for the government against the accused person. His work, then, corresponds to that of county prosecuting officers who act under state authority.

The US Marshals and their deputies are charged with arresting and holding in custody persons accused of crimes against federal laws, summoning jurymen, serving legal processes, executing the judgments of the federal courts, and protecting federal judges from personal violence when engaged in the performance of their official duties.

D. State Courts

The state court system is similar to the federal with a state supreme court empowered to declare state laws unconstitutional. Since the Constitution reserves to the states those powers not expressly delegated to the federal government, each state establishes and finances its own judiciary system and creates its own statutes. This accounts for the differences in the laws and legal systems of each of the 48 states. In general the common pattern in ascending order of authority is that of the District, County, Superior, and Supreme Court. By and large the legal tradition in the United States is derived from the English common law. In the state of Louisiana, however, prevailing law follows the French legal tradition or Code of Napoleon, which is based primarily on the codification of Roman Law.

Cities, like states, are empowered to establish and finance their own courts and create their own statutes and regulations. The majority of cases handled by municipal courts involve violations of traffic regulations, petty crimes and misdemeanors.

Most of the court practice used in the United States has come down from the English courts. All persons accused of a crime have the right of trial by jury. An accused person cannot be punished twice for the same offense. Two types of juries are used: the grand jury and a trial or petit jury. A grand jury is called to decide whether a person accused of a crime shall be obliged to defend himself in court. If a majority of the grand jury finds there is enough evidence to bring the accused person to trial, it draws up a formal charge in writing, called an indictment. Then a trial must be held to decide the person's guilt or innocence. For this purpose a trial or petit jury is chosen. The trial jury usually consists of 12 citizens. Its members hear the evidence and return a verdict of guilty or not guilty. In most cases the decision of the petit jury must be unanimous.

V. State Governments

A. Jurisdiction

The power, importance and prestige of the national government of the United States should not obscure the fact that practically every American citizen is at the same time a citizen of some state and an inhabitant of a sub-division of a state called a county, and of some fraction of a county known as a town, township, village, borough or city. The delegates to the Constitutional convention, and the people they represented, gave their first loyalty to their home states. It was from a union of 13 states that the national government originally arose and, notwithstanding the vast powers gathered to itself by the government in later years, the states are still the focal points of impressive authority and action. Without some acquaintance with the states and their governments, one cannot completely understand either the federal system or the national government itself.

State governments are mainly concerned with administering to and serving the everyday needs of the state's residents. The jurisdiction of the state extends principally to internal communications, education, property regulations, criminal code, working conditions, etc. The sole requirement imposed on the states by the federal Constitution is that their government be republican in form and that they adopt no laws which contradict or violate the Constitution, laws and treaties of the federal government.

In addition to operating governmental systems with very wide functions within their respective areas, the states perform services without which the national government, on its present constitutional basis, could not operate. All proposed amendments to the federal Constitution require ratification by state action in order to become effective. The states largely determine who may vote for representatives and senators in Congress, and for presidential electors. The states mark out the Congressional

districts from which representatives are sent to Congress, and also prescribe by law most of the regulations governing the nomination and election of senators, representatives and presidential electors. Should it ever again become necessary for the House of Representatives to choose a President, the representatives would vote by states as they did in 1824, each state having one vote. Employed as agents of the national government for a great variety of purposes, the states serve that government in the expenditure of appropriations in road building, forest protection, unemployment relief, maternal and child welfare, agricultural and vocational education, industrial rehabilitation and national defense.

B. Characteristics and Structure

Considering the high degree of independence enjoyed by each of the 48 states, one might well feel a sense of futility in engaging in a study of American state governments. If one were inclined to follow the subject to minute details many years of research would be required. However, there are many fundamental features which the states have in common. All have a single chief executive--the governor. All have a written constitution, legal equality and native or inherent powers. With the lone exception of Nebraska which has a one-house legislature, all of the states are organized on the same broad pattern and have functions and problems generally similar. Every state has a representative legislature, civil and criminal courts, local governments, separation of powers and a system of checks and balances.

The proper discharging of its many obligations to the people brings the state government into a variety of activities. In many cases it works jointly with other government units and sometimes it is solely responsible.

The 48 states differ widely in both area and population. Rhode Island has a land area of less than 1,100 square miles while Texas boasts of an area of more than 260,000 square miles. Nevada has a population of less than 200,000 while New York State is the residence of about 16 million people. Yet, their governments have much in common and the differences are very slight. It should not be forgotten that regardless of size or population each state sends two of its citizens to the United States Senate.

The state is divided into districts and the people of each district elect one state senator and one or more representatives. It is usually a requirement that candidates for these offices shall have lived for at least one year in their districts before they can qualify for election. The state government often has great difficulty in so dividing the state into districts that both city and county people get equal representation in the state legislature.

C. Legislative Procedure

In the 47 states--Nebraska is the only exception--which have legislatures divided into two Houses, laws are made in much the same way. Any member of either House may propose a bill which he wishes to have enacted into law. After the bill is introduced it is referred to an appropriate committee for study.

Most of the actual work of the state legislature is carried on by committees. In considering important bills the committees frequently hold public hearings where persons favoring or opposing the bill may express their views. If the committee reports the bill out favorably there is usually some debate on the "floor" of the House before the vote. Just as in the national Congress, a bill which passes one House is then sent to the other where similar steps are taken. If a bill passes both Houses it is sent to the chief executive, the Governor. In every state except North Carolina the Governor may veto a bill of which he

disapproves. The legislature may pass the bill over the Governor's veto. In some states a majority only is required. Other states follow the national pattern and require a two-thirds vote to override a veto.

D. Functions of State Officials

The governors of about half of the states are elected for two years and the rest for four. His powers are outlined in the state constitution. Like the President of the United States, he frequently suggests new laws to the legislature and he is empowered to call special sessions. He appoints members of many boards and commissions and is head of the National Guard in his state.

The Secretary of State is an elected official on the Governor's staff who is charged with keeping the official records of the state. He has no diplomatic or representational function in spite of the identity of his title with that of the federal cabinet officer responsible for foreign affairs.

All states have auditors or comptrollers and treasurers whose duties are so obvious that they need not be spelled out here. Usually there are also labor commissions, banking commissions, board of health and highway departments.

The Attorney General is the chief law officer of the state. He goes into the law courts, or sends in one or more of his associates, to represent the state in any case in which the interests of the people of the state are involved. He also advises the Governor and other state officials on the meaning and application of many state laws.

E. State Judicial System

The Judiciary Branch in the state court system has the duty of explaining the state laws and of declaring how the laws shall be applied in cases brought to the courts by persons or organizations, or by the state in prosecuting criminals. The state court

judges settle disagreements in which persons, groups of persons, the state, or local governments are involved. They hear cases about personal rights and property. They help to decide the guilt or innocence of persons accused of breaking the state laws and determine the punishment of crimes. The state Supreme Court may declare that a state law which does not agree with the state or federal constitution is void because of its unconstitutionality.

State courts have authority to try both civil and criminal cases, except those specifically reserved to the federal courts. The Constitution guarantees every American the right to freedom, property and life. If another person violates these rights, he can be sued in court by the injured person. The court is charged with hearing both sides of the case, ending the injury and assessing damages against the guilty person. A case between two persons, where the injury does not affect the general public, is called a civil suit. In such cases the state is not represented by legal counsel although the presiding judge is a state official. If the injury does harm to the public or breaks a law which is designed to protect the people, the act is considered a crime, and the state, represented by the Attorney General brings a criminal action against the person who has broken the law. In this category are such crimes as murder, burglary, robbery, rape, bribery, arson and perjury.

The simplest form of state court is usually presided over by a Justice of the Peace. Many of these individuals operate on a part-time basis, and a fee system whereby they are paid a certain percentage of the fines which they levy. These men have been lampooned in story and on the stage so much that most Americans regard them as comic opera characters. Many tourists have seen their vacations wrecked by being caught in speed traps designed to snare unwary motorists. Frequently, the fines imposed are all out of proportion to the offense and naturally the larger the fine, the larger the fee for the Justice of the Peace. This archaic

system is usually confined to rural areas although right next to the District of Columbia, nearby Maryland counties still use this outmoded system. In large cities such work is usually done by the police courts or special municipal courts.

Cases involving more important questions are handled by various other courts, usually called District Courts, County Courts, Superior Courts, Circuit Courts or Common Pleas Courts. In most cases these courts are authorized to handle both civil and criminal cases.

The highest court in the state legal system is the Supreme Court. This court hears many cases which have already been argued and decided in a lower court, but in a way which the loser believes to be unfair. Most of its work consists of hearing such appeals. The Supreme Court is given power to review the decisions of the lower courts in order to protect all parties from possible injustice. The right to seek such a review is known as the right of appeal. In criminal cases, where a man's life is at stake, even a poor man has a reasonable expectation of getting the free services of court-appointed attorneys to present his case to the highest tribunal. In civil cases it is often extremely difficult for a poor man to beat a large corporation. American big business frequently retains attorneys on the payroll to protect its interests. Even though a man might win a large judgment in a lower court, frequently he cannot afford the attorney's fees or prolonged absence from work required while the corporation appeals to successively higher courts to reverse the lower court's decision.

In some states there are a large number of special courts. For example, there may be a Probate Court to help distribute the property of persons who have died, especially if they have not made a will or if their fortune were large. There may be Juvenile Courts to try cases in which children have broken the law. New York City is currently trying to cope with the problem of about 10,000 juvenile delinquents who have made a mockery of the city's educational system by all sorts of harassments and even major criminal acts.

In addition, there frequently are established courts of domestic relations to settle disagreements between husbands and wives, attempt reconciliation, or grant divorce. Usually there are also small claims courts to handle cases of small debts with a minimum of expense.

All trials are presided over by judges who are elected officials in some states, although appointed by the Governor or by the legislature in others.

VI. Contrasts to the American System

A. Introduction

In brief, we have covered the organization and structure of the American federal and state governments and said a little about their inter-relationships. As stated at the very beginning, the framers of the American Constitution brought forth a government which has endured for well over a century and a half. No serious student of American history and government entertains the thought that the American political system is well-nigh perfect and should be copied by other countries, especially those now emerging from colonial status. The least that can be said for the American system is that it works very well for the United States. No practical effort to alter the system of checks and balances has been made during the existence of the Federal Union. Eminent writers have frequently compared the American system to the Parliamentary system of other nations, especially France and England.

The weakness of the Executive in the French system and the short life span of the average Cabinet in France have led to comparisons which reflect much more credit on the American system because of the greater stability of the American way. The same has not been true of comparisons between the American system and the British Parliamentary method of government. Many able writers, including prominent American political scientists, have taken up the case for the Cabinet form of government as meeting the ideal criteria of sound administration better than the Presidential system.

B. Comparative Governmental Theory

We have seen that the American Constitution has created a republican form of government. The founding fathers thought such a form necessary in order to insure the principle of popular sovereignty. In the 20th century, several monarchies such as those of Great Britain, Holland, Belgium and Sweden have acknowledged

the ultimate authority of the people. Two centuries ago, however, monarchic government was closely associated with the principle of rule by divine right. As can be seen plainly in the Declaration of Independence, George III's ministers were held to be responsible to him, and equally reprehensible in their actions toward the colonies. Hence it was felt that only a republican government, in which public officials are subject to frequent change, or at least criticism, through direct or indirect election, could safeguard the rule of law. Denied permanent tenure, officials could hardly lay claim to ruling by divine right.

Regardless of the form of government, one needs to look rather at its substance. The question of who or what really dominates a government is one which has bothered political scientists back to the days of ancient Greece. The most famous classifications came from them and are still very widely used. They distinguish three types of governments, according to the number of their political leaders: governments directed by one man, by the few, and by the many. The first was called a monarchy, sometimes a tyranny; the second, an oligarchy or an aristocracy; and the third a democracy.

While these classifications have been useful they are, as stated, a bit over-simplified. For example, the British Government has the form of a monarchy with a single hereditary ruler. Yet it is truly a democracy, for all the people vote for and elect Parliament which is the source of the active power of the government. Further, England was for many years an aristocracy since power was concentrated in the grasp of a few wealthy, landed nobles and businessmen. The facade of this nobility still exists and England has an ample share of peers but their political influence is minimal.

There are, however, many governments which are or were democracies in form but oligarchies in fact. Many Latin American countries fit this pattern. On the other side of the coin, most

monarchies or tyrannies have definite traces of oligarchy. Tito is pretty clearly an absolute ruler of Yugoslavia, but he has prominent men around him on whom he depends heavily and who exercise great powers in their own right.

We must conclude then that all governments exercise varying degrees of power over their citizens regardless of the form of government. Let us consider only those governments where the democratic process is such that there is a contest for office between two or more candidates, and where the people vote for and elect the individual or group which is a strong element, or even the predominant element, in the power process. To evaluate the effectiveness of the American system then, there is no useful purpose served in comparing it with the administration of the USSR in spite of many similarities in their respective Constitutions. The role of the Supreme Soviet, which has 1,380 members elected on a single slate, is far different from the role of the American Congress where generally the successful candidate has survived party primary nominations and defeated at least one major opponent before taking his seat.

Furthermore, the role of the USSR's Supreme Soviet is quite distinct from that of the American Congress. The Supreme Soviet, according to the Constitution of the USSR, is the highest governmental body with legislative functions, primarily, and some judicial and executive functions as well. The American Congress does not have executive power and acts in a judicial capacity only in cases of impeachment. The meetings of the Supreme Soviet are usually of brief duration and most of its functions are carried on by the Praesidium between sessions.

The very fact that the American national government is composed of several independent organs--the President, Congress, and the Supreme Court--makes it as a whole a decentralized government. The federal system, admitting additional independent authority to the state governments, makes the total governmental

picture even more decentralized. By contrast, England gives very large powers to the Prime Minister and his Cabinet, while in the USSR the real center of the power process is localized in the 30-odd member Praesidium rather than the large two-House chamber of the Supreme Soviet. Many Latin American republics appear similar to the United States in structure and in their written constitutions, but somehow the foundations are not as strong and their histories are characterized by revolutions, military juntas and dictatorship instead of democracy.

C. Comparative Governmental Systems

Perhaps the most fruitful comparisons we can make will be to consider the United States as a classic example of a successful presidential or constitutional republic, and England and France as classic examples of the Parliamentary system which stresses ministerial or Cabinet responsibility.

1. Legislative Function

In the Parliamentary system, political power appears to be concentrated in the legislative assembly. The legislature names as an executive a Cabinet whose members are drawn from the majority party or coalition of parties in the legislature. It dismisses the Cabinet by registering an adverse vote on a measure proposed by the Cabinet. Under this system as it operates in France, there is no separation of powers. All power belongs to the legislative branch.

However, this is definitely not the case in England. Although there is no constitutional separation of powers--Britain has no written constitution--there is a functional division. Members of the Cabinet perform three quite distinct functions: (1) as members of Parliament they vote to enact laws; (2) as members of the executive, they carry out the laws; and (3) unless they are ministers without portfolio, as heads of government departments they convey the policy of the majority party to the various

administrative agencies of the state. It has been many years since Parliament by a vote of no confidence has ousted a British Cabinet. For decades the British Prime Minister has been so strong that he has called elections for a new Parliament rather than yield to pressure from the incumbent Parliament. Actually, the strength of the British party system has made the Prime Minister, as head of the majority party, comparatively independent of Parliament. Thus there is a greater separation of powers under the British Parliamentary system than appears on the surface.

In France, however, where the average life of a government is about six or seven months, the Cabinet has never won the power and quasi-independence enjoyed in Great Britain. Consequently, the chief executive is often at the mercy of the legislature.

In both France and England, men enter the Cabinet only after having been elected to the Parliament. In America, however, the members of the Cabinet are freely chosen by the President. The words "freely chosen" are perhaps open to some dispute because the President has to give due weight to geographic considerations and the demands of pressure groups. However, the fact remains that he chooses them. They are not elected, although they may well have served or be currently serving at the time of their selection by the President in a federal or state position to which they had been elected.

Almost invariably the members of the Cabinet are chosen from the party of the President. Within that party, consideration must be given to various factions as well as geographic representation. Franklin D. Roosevelt, who had served as Governor of the State of New York before his election to the Presidency, was accused of naming too many Easterners. In 1941 four of the 10 members were from the State of New York. By contrast, Eisenhower's first cabinet had two each from New York and Michigan; and one each from Ohio, Oregon, Utah, Illinois, Massachusetts and Texas. The

Attorney General must be a lawyer. The Secretaries of Commerce and of Labor must not be strongly in disfavor with major business and labor organizations respectively.

The functions of the American Cabinet are left pretty much to the will of the President. Precedent has been established very definitely that each member is the head of and has responsibility for a major government department or agency. Beyond that, however, the Cabinet as a whole, or individual members of it, may exert great influence on the President. On the other hand, the President's closest advisers may come from other elements of the government or they may be private citizens holding no position in the Administration. Warren G. Harding, the post-World War I President, was the last chief executive to rely heavily on the Cabinet for counsel. Eisenhower has shown considerably more deference to the Cabinet than did Roosevelt or Truman but, in addition, he has leaned heavily on other appointive officers especially Sherman Adams, his White House Chief of Staff.

The American Cabinet must be carefully distinguished from European Cabinets. In Europe the Cabinets are accountable, more or less, as a unit to their legislatures and can usually be unseated by an adverse Parliamentary vote. In France, Prime Ministers are little more than the equals of other Cabinet members and the overthrow of the Cabinet by Parliament may merely produce a re-grouping of former office holders as nominal heads of other ministries. Sometimes a Prime Minister loses out on a vote of confidence and his government falls. A few days later he may be Foreign Minister in a new Cabinet. On the contrary, American Cabinet members are responsible only to the President. Congress can discharge a Cabinet member only if impeached by the House and convicted by the Senate. Obviously, this process is not likely to be invoked for trivial reasons. Members of the farm bloc and prominent Republican politicians have urged President Eisenhower to dismiss Ezra Taft Benson whom many regard as a heavy

political liability. Eisenhower, however, has steadfastly defended his Secretary of Agriculture. Under a Parliamentary system, a Cabinet member who is extremely unpopular could easily bring about the downfall of the government.

In neither England nor France can a Cabinet survive when an opposition party wins a majority of seats in the Parliament. This is not true in the United States. President Eisenhower has a Cabinet of Republicans today but both the Senate and the House of Representatives are controlled by the Democratic Party.

2. Executive Leadership

In a Parliamentary system, executive leadership comes from party control. In the United States it is often difficult for the President to control members of his own party in Congress. However, unlike France where frequently times of crisis have found that country without a government, party lines in the United States have a tendency to disappear when the security of the nation is threatened. President Truman found to his dismay that a combination of Southern Democrats and Republicans effectively blocked the program which his liberal Democratic supporters tried to carry out in 1946. This led Truman to mobilize public opinion behind him in the 1948 campaign by denouncing what he called the "No good do nothing 80th Congress." In 1950, when the Democrats again lost control of Congress, it was seriously suggested that Truman resign. However, little attention was paid to the suggestion although such a departure from office would have been automatic in France and England under similar circumstances.

There is neither the time nor the space to discuss at length the inherent weakness of the French government. To explain it in a few words, it may be sufficient to state that the weaknesses of the Constitution of 1875 which produced such cataclysmic results for the Third Republic, have by no means been eliminated in post-war France. The same inherent weaknesses which produce splinter parties have resulted in a repetition of governments

by coalition and compromise and Cabinets without a clear majority of support from a predominant political party.

In practice then, we might sum up a brief review of the executive and legislative arms of the three countries by stating that the American Executive is strong, has influence over Congress but must always struggle with it even when his own party has a majority. His Cabinet is secure as long as he supports the individual members of it, and his own tenure of four years is assured. In England, the Prime Minister and his Cabinet are powerful because they represent the strong elements of the party in control of Parliament, and historically it is more likely that Parliament will be dissolved and new elections called, than that the government will fall on a vote of confidence. In France, the tenure of governments is short because there is no single powerful political party which can command on its own a sufficient number of votes to permit anything but a government by compromise.

3. Comparative Legal Systems

Finally, we shall take a quick look at the comparative legal systems. The functions of the judge as lawmaker are most noticeable in the United States, exist under limited circumstances in Great Britain, and are virtually absent in France. The extraordinary judicial power in the United States can be explained largely in terms of the power of judicial review at the federal level.

The tradition of the judge as a "universalist" is an outgrowth of the common law. Theoretically, in the common law system, the judge does not make the law, he merely applies the principles of natural law to the case before him. This type of interpretation is especially common in frontier or primitive societies where the wise man of the tribe sits in judgment over disputes, and his decisions serve as precedents in future instances of the same sort.

The British common law grew up on this foundation. When Lord Edward Coke informed King James I that the sovereign was

under no man, but under God and the law, he really meant that the King was subject only to God and the judges. Both the King and Parliament rejected this concept, and by the beginning of the 17th century, the British judges had retreated from this high pinnacle never to return.

The rise of Parliament to a position of pre-eminence militated against the lawmaking functions of the judges, but it was only when Britain entered the industrial age that the judges found their activities really circumscribed. As Parliament came face to face with the problems of an increasingly complex industrial civilization, more and more legislation, dealing in increasing detail with social and economic issues, was placed on the statute books. Furthermore, a larger and larger administration, often armed with judicial authority, moved into the field, charged with handling the specifics of legislation--a task previously entrusted to the judges. Thus today the British legal system is based on written law, set forth by Parliament and by administrators acting under Parliamentary authority, rather than on laws made by judges.

Although in the United States the legal system developed from the same sources as the British, it did so with certain outstanding differences. In the United States the principle of legislative supremacy has never triumphed de jure although at times it has achieved de facto victories. In addition, it was determined quite early in American history that, with one exception in the field of commercial law, there was no federal common law. Oddly enough, a sort of federal common law existed in commercial matters until the Supreme Court, in 1938, ruled that it had been unconstitutional for 149 years.

However, while there was no substantial federal common law, there was extensive use of judge-made law in most of the states. But here again the law-making functions of the judges declined first in those areas of industrial advance, leaving the judges

operating on a common law basis largely in the frontier areas. Furthermore, some states such as Florida, California and New Mexico had considerable infusions of Spanish law, while the state of Louisiana had a codified system growing out of its thoroughly French background.

Today, in consequence, all federal law, except that made by the courts in the process of judicial review, is written law devised and enacted by the Congress, often on the impetus of the President, and by the President himself acting in most cases under statutory warrant, but occasionally under his inherent constitutional powers. The individual states, on the other hand, present no uniform pattern. Most of the heavily industrialized, urban states have extensive codification of their statutes, while the common law lingers on largely in the rural states.

If the development of the British and American legal systems over the last century and a half has been characterized by the decline of the universalist judge, the French system of codified law, in force since Napoleon's day, was designed to prevent judges from ever becoming universalists. The structural keystone of the French Revolution was legislative supremacy, and one of the ways to keep the legislative supreme was to thoroughly domesticate the judiciary.

Implemented by a highly centralized judicial bureaucracy, the codal system, like the educational system introduced after the Revolution, was initially designed to destroy the parochialism of the ancien regime, which had been a hodge-podge of legal institutions. It should be noted here that the centralization referred to is of an administrative, not a geographical nature. While the judicial system is decentralized geographically, it is run from the center with the purpose of enforcing a uniform set of legal principles on the whole of France.

The Codes, prepared by legal scholars, are designed to set forth in clear, concise terms the exact legal consequences of any action. In other words, they are promulgated under legislative authority for the express purpose of circumscribing the judges and telling them precisely what to do under almost any foreseeable set of circumstances. Thus in France legal administration is in the hands of technicians who prepare the Codes and, in effect, technicians who administer them, with the Parliament sandwiched in between. In contrast with the theory of the common law, which has the judge "declaring" natural law, the theory behind the Codes is basically directed toward leashing the judiciary. French judges are not intended to be oracles of natural law, and the judiciary is not allowed to compete with the legislature or to search out for itself the principles of "natural justice."

Although writers on political science and constitutional law have frequently pointed out the sharp distinctions between Anglo-American common law and the French Codal system, it must be recognized that recent practice in the United States and Britain has tended in the direction of French practice. More and more the British and Americans have been replacing judicial discretion with elaborate statutory provisions which tend to resemble codes more than the common law tradition. In both England and America the myth of the judge as universalist persists, while the French have openly and admittedly bureaucratized the administration of justice.